Eugene Dillinger, d/b/a Vandergrift Foodland *and* United Food & Commercial Workers International Union, Local Union 23, AFL–CIO–CLC

Genter, Inc. d/b/a Heartland Food Center *and* United Food & Commercial Workers International Union, Local Union 23, AFL–CIO, CLC. Cases 6–CA–29160,–CA–29160, 6–CA–29389, 6–CA–29161, and 6–CA–29499

July 30, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon charges filed by the Union on August 5, 1997, in Cases 6–CA–29160 and 6–CA–29161, on November 25, 1997, in Case 6–CA–29389, and on January 28, 1998, in Case 6–CA–29499, the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on March 20, 1998, against Eugene Dillinger, d/b/a Vandergrift Foodland (Respondent Vandergrift), and Genter, Inc., d/b/a Heartland Food Center (Respondent Genter), collectively, the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondents failed to file an answer.

On July 9, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On July 10, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 19, 1998, notified the Respondents that unless an answer were received by the third day following the Respondents' receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Vandergrift, with an office and place of business in Vandergrift, Pennsylvania, engaged in the operation of a supermarket until operations ceased on June 11, 1997, at the Vandergrift facility. During the 12-month period ending July 31, 1997, Respondent Vandergrift, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Vandergrift facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

At all material times, Respondent Genter, a corporation with an office and place of business in Indiana, Pennsylvania, engaged in the operation of a supermarket until operations ceased May 31, 1997, at the Indiana, Pennsylvania facility. During the 12-month period ending July 31, 1997, Respondent Genter, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its Indiana, Pennsylvania facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that Respondent Vandergrift and Respondent Genter are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Union has been the designated exclusive collective-bargaining representative of certain employees of Respondent Vandergrift (the Vandergrift unit) and has been recognized as the representative by Respondent Vandergrift. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 17, 1996, to March 20, 1999 (the 1996–1999 agreement). The Vandergrift unit, which is set forth in article 2 of the 1996–1999 agreement, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of certain employees of Respondent Genter (the Genter unit) and has been recognized as the representative by Respondent Genter. This recognition has been em-

bodied in successive collective-bargaining agreements, the most recent of which is effective from December 1, 1996, to January 22, 2000 (the 1996–2000 agreement). The Genter unit, which is set forth in article 2 of the 1996–2000 agreement, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Vandergrift and Genter units.

About October 16, 1997, and January 26, 1998, by letters dated October 16, 1997, and January 26, 1998, the Union requested that Respondent Vandergrift furnish the Union with certain information, which is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Vandergrift unit. Since about October 24, 1997, Respondent Vandergrift has failed and refused to furnish the Union with the requested information.

About October 16, 1997, and January 26, 1998, by letters dated October 16, 1997, and January 26, 1998, the Union requested that Respondent Genter furnish the Union with certain information, which is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Genter unit. Since about October 24, 1997, Respondent Genter has failed and refused to furnish the Union with the requested information.

About August 1, 1997, Respondent Vandergrift failed to continue in effect all the terms and conditions of the 1996–1999 agreement by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees, respectively, of that agreement. Respondent Vandergrift engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

About August 1, 1997, Respondent Genter failed to continue in effect all the terms and conditions of the 1996–2000 agreement by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees, respectively, of that agreement. Respondent Genter engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By failing to provide the requested information and by changing terms and conditions of employment of the respective unit employees, Respondent Vandergrift and Respondent Genter have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and have thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that Respondent Vandergrift and Respondent Genter have each failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the respective unit employees, we shall order Respondent Vandergrift and Respondent Genter to furnish the Union the information requested on October 16, 1997 and January 26, 1998.

Furthermore, having found that Respondent Vandergrift and Respondent Genter have both violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the respective benefit funds since about August 1, 1997, we shall order Respondent Vandergrift and Respondent Genter to make whole its respective unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216, fn. 7 (1979). In addition, Respondent Vandergrift and Respondent Genter shall reimburse their respective unit employees for any expenses ensuing from their failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

Finally, having found that Respondent Vandergrift and Respondent Genter each violated Section 8(a)(5) and (1) by unilaterally failing, since about August 1, 1997, to pay their respective unit employees in accord with the contract provision ''Pro Rata Vacation Benefits Due to Layoff,'' we shall order the Respondents to make their respective unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, supra, with interest as prescribed in

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

New Horizons for the Retarded, supra. Inasmuch as both the Vandergrift and Genter facilities have been closed, we shall order the Respondent to mail a copy of the notice to all employees employed at the time of the respective closures.

ORDER

The National Labor Relations Board orders that the Respondent, Eugene Dillinger, d/b/a Vandergrift Foodland, Vandergrift, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish the Union requested information that is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of its unit employees.

(b) Unilaterally failing to continue in effect all the terms and conditions of the 1996–1999 agreement by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information requested on October 16, 1997, and January 26, 1998.

(b) Make all contractually required contributions to the benefit funds that have not been made since about August 1, 1997, for the following unit employees and make them whole in the manner set forth in the remedy section of this decision:

> The unit which is set forth in Article 2 of the 1996–1999 agreement between the Union and Respondent Vandergrift which is effective from March 17, 1996, to March 20, 1999.

(c) Make the unit employees whole, with interest, for any loss of earnings attributable to its failure to pay them in accord with the provision of the 1996–1999 agreement entitled ''Pro Rata Vacation Benefits Due to Layoff,'' in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, a copy of the attached notice marked ''Appendix A,''[2] on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, to all employees employed by the Respondent at the time of the June 11, 1997 closing of the Vandergrift facility.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The National Labor Relations Board orders that the Respondent, Genter, Inc., d/b/a Heartland Food Center, Indiana, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish the Union requested information that is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of its unit employees.

(b) Unilaterally failing to continue in effect all the terms and conditions of the 1996–2000 agreement by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information requested on October 16, 1997, and January 26, 1998.

(b) Make all contractually required contributions to the benefit funds that have not been made since about August 1, 1997, for the following unit employees and make them whole in the manner set forth in the remedy section of this decision:

> The unit which is set forth in Article 2 of the 1996–2000 agreement between the Union and Respondent Genter which is effective from December 1, 1996, to January 22, 2000.

(c) Make the unit employees whole, with interest, for any loss of earnings attributable to its failure to pay them in accord with the provision of the 1996–2000 agreement entitled ''Pro Rata Vacation Benefits Due to Layoff,'' in the manner set forth in the remedy section of this decision.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports,

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense, a copy of the attached notice marked ''Appendix B,''[3] on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, to all employees employed by the Respondent at the time of the May 31, 1997 closing of the Genter facility.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 1998

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish the United Food & Commercial Workers International Union, Local 23, AFL–CIO–CLC, requested information that is necessary for and relevant to, the performance of its duties as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT unilaterally fail to continue in effect all the terms and conditions of our agreement with the Union which is effective from March 17, 1996, to March 20, 1999, by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the information it requested on October 16, 1997, and January 26, 1998.

WE WILL make all contractually required contributions to the respective benefit funds that have not been made since about August 1, 1997, for the following unit employees and make them whole in the manner set forth in a decision of the National Labor Relations Board:

> The unit which is set forth in Article 2 of the 1996–1999 agreement between the Union and us which is effective from March 17, 1996, to March 20, 1999.

WE WILL make our unit employees whole, with interest, for any loss of earnings attributable to our failure to pay them in accord with the provision of the 1996–1999 agreement entitled ''Pro Rata Vacation Benefits Due to Layoff,'' in the manner set forth in a decision of the National Labor Relations Board.

EUGENE DILLINGER, D/B/A VANDERGRIFT FOODLAND

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to furnish the United Food & Commercial Workers International Union, Local 23, AFL–CIO–CLC, requested information that is necessary for and relevant to, the performance of its duties as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT unilaterally fail to continue in effect all the terms and conditions of our agreement with the Union which is effective from December 1, 1996, to January 22, 2000, by abrogating sections 14.3 and 26.9, ''Pro Rata Vacation Benefits Due to Layoff'' and relating to the continuation of contributions and benefits for laid-off employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union the information it requested on October 16, 1997, and January 26, 1998.

WE WILL make all contractually required contributions to the respective benefit funds that have not been

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

made since about August 1, 1997, for the following unit employees and make them whole in the manner set forth in a decision of the National Labor Relations Board:

> The unit which is set forth in Article 2 of the 1996–2000 agreement between the Union and us which is effective from December 1, 1996, to January 22, 2000.

WE WILL make our unit employees whole, with interest, for any loss of earnings attributable to our failure to pay them in accord with the provision of the 1996–2000 agreement entitled ''Pro Rata Vacation Benefits Due to Layoff,'' in the manner set forth in a decision of the National Labor Relations Board.

GENTER, INC., D/B/A HEARTLAND FOOD CENTER